



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF)		
)		
Heriberto Hernandez,)		
Complainant)		
)	CHARGE NO.:	1994 CA 2306
and)	EEOC NO.:	21B 941579
)	ALS NO.:	9106
)		
Cam Fran Tool Company, Inc.,)		
Respondent)		

RECOMMENDED ORDER AND DECISION

This matter is before me upon review of the case file after it was assigned to me on July 25, 2001. The Department of Human Rights on behalf of Complainant filed the complaint at the Commission on November 2, 1995. The verified answer of the Respondent was filed on November 27, 1995. Both parties were represented by counsel. The standard general scheduling order was entered on December 21, 1995 and the parties apparently embarked on the discovery process, leading eventually to a final status hearing scheduled for December 18, 1996. However, sometime between February 22, 1996 and December 23, 1996, Respondent's counsel advised Administrative Law Judge Denise A. Diaz that Complainant Heriberto Hernandez was deceased. A notice seeking the substitution of the legal representative of the estate of Complainant, in accord with Commission Rule 5300.660(b), was sent to counsel for both parties on December 23, 1996. There is nothing further in the record after this notice was sent.

Findings of Fact

1. Respondent was properly served with notice of this matter, answered the

complaint, and was represented by counsel. Likewise, Complainant was represented by counsel until his death.

2. Respondent's counsel advised the Commission on or before December 23, 1996 that Complainant Heriberto Hernandez was deceased.

3. A notice dated December 23, 1996 was sent by Administrative Law Judge Denise A. Diaz to counsel for both parties which advised them that the heirs of Heriberto Hernandez were given 90 days to seek the substitution for him of a legal representative to continue the prosecution of his complaint, as provided in Commission Procedural Rule 5300.660(b).

4. There is no evidence in the record of this case that any person sought to substitute as legal representative for Complainant at any time since December 23, 1996, and specifically, not in the 90-day period following that date. Further, no activity of any kind occurred in this case after December 23, 1996.

Conclusions of Law

1. Rule 5300.660(b) provides that the legal representative of a deceased party may move to substitute for the deceased party within 90 days after receiving notice of that right.

2. If no legal representative comes forward during the 90-day period, the underlying complaint may be dismissed with prejudice for want of prosecution.

Discussion

The Commission has often in the past dismissed cases under circumstances identical to those present in this case. *See Parker and University of Chicago Medical Center*, Ill. H.R.C. (Charge No. 1997CA0031, March 24, 1999). Although the applicable rule permits a legal representative to substitute his or her appearance for that of the deceased party, there is only a

90-day window to perfect the substitution. Not only has there been no effort by any purported legal representative to substitute for the Complainant in this matter, but there has been no activity of any kind in this case since 1996. Therefore, I recommend that this matter be dismissed with prejudice at this time.

Recommendation

It is recommended that this case be dismissed with prejudice pursuant to the authority granted to the Commission in the Illinois Human Rights Act at 775 ILCS 5/8A-102(I)(6).

ENTERED:

July 30, 2001

BY: _____

DAVID J. BRENT
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION